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and KENNY PAUL

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

ANOOP RAJKUMAR,

Plaintiff,

vs.

CISCO SYSTEMS, INC., VENU  
DHARMAPURI, and KENNY PAUL, et  
al.,

Defendants.

Case No. C08-01600-PVT

**DEFENDANTS CISCO SYSTEMS, INC.,  
VENU DHARMAPURI, AND KENNY  
PAUL'S STATEMENT REGARDING  
PLAINTIFF ANOOP RAJKUMAR'S  
OPPOSITION TO MOTION TO DISMISS**

Hearing Information  
Date: August 5, 2008  
Time: 10:00 a.m.  
Place: Courtroom 5

Defendants Cisco Systems, Inc., Venu Dharmapuri, and Kenny Paul (together "Cisco Defendants"), respectfully submit this statement in response to the opposition received from Plaintiff Anoop Rajkumar ("Plaintiff") on July 28, 2008. Plaintiff's opposition was filed in response to Cisco Defendants' motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), and in the alternative, for a more definite statement of the complaint, pursuant to Federal Rule of Civil Procedure 12(e).

The Cisco Defendants were served with Plaintiff's Complaint on May 29, 2008. Soon thereafter, the Cisco Defendants filed their motion to dismiss this action, pursuant to Federal Rule of Civil Procedure 12(b)(6), and in the alternative, for a more definite statement of the Complaint, pursuant to Federal Rule of Civil Procedure 12(e) on June 18, 2008 ("Motion"). A noticed hearing on this Motion is set for August 5, 2008. Cisco Defendants received Plaintiff's

1 Opposition papers via U.S. Mail on July 28, 2008—eight days before the Motion’s scheduled  
 2 hearing in this Court. No proof of service was attached to Plaintiff’s Opposition papers.

3 The Local Rules for the United States District Court for the Northern District of California  
 4 provide explicit minimum time periods regarding the service and filing of opposition and reply  
 5 papers to a noticed motion. Absent a party stipulation or Court Order establishing a longer or  
 6 shorter response or reply period, “[a]ny opposition to a motion must be served and filed not less  
 7 than 21 days before the hearing date.” N.D. L.R. 7-3(a). Plaintiff filed his Opposition on July 24,  
 8 2008 and the Cisco Defendants were not served until July 28, 2008. For Plaintiff to be compliant  
 9 with Local Rule 7-3(a), his Opposition should have been filed on or before July 15, 2008. Thus,  
 10 Plaintiff’s Opposition is delinquent and, therefore, should not be considered by this Court.

11 In addition, the Local Rules require that “[a]ny reply to an opposition must be served and  
 12 filed by the moving party not less than 14 days before the hearing date.” N.D. L.R. 7-3(c).  
 13 Because Plaintiff filed his Opposition on the date Cisco Defendants’ reply was due under the  
 14 Local Rules, and Cisco Defendants did not receive service of Plaintiff’s Opposition until six days  
 15 later, the Cisco Defendants were denied an opportunity to submit a reply to Plaintiff’s Opposition  
 16 and were therefore prejudiced.

17 Because of Plaintiff’s failure to adhere to the Local Rules, Cisco Defendants submit that  
 18 their Motion should be considered unopposed. The Cisco Defendants do not wish to burden the  
 19 Court with a reply brief to a motion that it could and should deem to be unopposed. If, however,  
 20 the Court would like Cisco Defendants to address any substantive issues the Court can identify  
 21 prior to the August 5, 2008 hearing, the Cisco Defendants are more than willing to oblige.

22 Dated: August 1, 2008

MORGAN, LEWIS & BOCKIUS LLP

23 By



Howard Holderness  
 Attorneys for Cisco Defendants  
 CISCO SYSTEMS, INC., VENU  
 DHARMAPURI, and KENNY PAUL